Supreme Court, U.S.
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No. (1)

Supreme Court

STEPHEN DIBBS,

Petitioner, pro se,

-against-

PAUL ROLDAN, Commissioner, New York State Division of Housing and Community Renewal, **(the "DHCR")**
JOHN MULHOLLAND, administrator, DHCR,
DENNIS RYAN, Commissioner,DHCR
BUILDING INSPECTORS of New York City Department of Housing Preservation and Development, (**"HPD"**)
JERILYN PERINE, Commissioner, HPD,
PATRICIA LANCASTER, Commissioner, New York City Department of Buildings ("DOB"),
KENNETH PODZIBA, Commissioner, New York City Board of Standards and Appeals ("BSA"),
TEN BE OR NOT TEN BE, INC., (landlord), TIM GREENFIELD-SANDERS (landlord), LAWRENCE PINNER (Landlord's architect),
JOAN LOBIS,CAROL HUFF, EILEEN BRANSTEN, New York State Supreme Court Judges,

Respondents

On Petition for Writ of Certiorari to the United States Court of Appeal for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Forty Years after Camara v Municipal Court of San Francisco, did New York's, Administrations, State and Federal Courts, comply with it's ruling, or did they instead create elaborate unwritten and unconstitutional policies and practices to evade Camara's prohibition on warrantless administrative search and seizure?

2. Was the 7 year delay of judicial review caused by an unwritten, unconstitutional policy of misrepresentation, concealment and delay, by New York Courts and Administration, who then falsely blames the innocent plaintiff-victim. Or stated differently, did New York courts "railroad" unpopular tenant issues, including warrantless entry and seizure and demolition, into procedural failure by causing delay and requiring overly burdensome, unnecessary and prejudicial litigation?

3. Did New York fail to provide Constitutional Parity and meaningful and timely procedures appropriate to the nature of a warrantless entry, seizure of property, eviction, continuing dangerous Nuisance, and individual officer liability case, when he was never given an evidentiary or adversarial hearing at the Administrative level and these deficiencies were never corrected by state judicial review ?

4. If a Federal District Court has jurisdiction to determine if DHCR and HPD procedures comport with the minimum requirements of Due Process, did my New York Federal District Court and 2d Circuit

Federal Appeals Court conflict with New York State court's rulings of, Rush Realty, Chinatown Apartments, etc, who have already made determinations that city, "HPD" and state "DHCR" procedures which don't hold a hearing or allow witnesses and cross examination and don't provide a full record, do not comport with the minimum requirements of Due Process appropriate to the nature of warrantless entry, and seizure, expectation of privacy, state created dangerous conditions, Nuisance, trespass, habitability... with hotly disputed material issues of credibility?

5. Did New York Administrative and Court procedures overburden the right to adequate Notice and a meaningful hearing at a meaningful time appropriate to the nature of the case, involving, Warrantless Break-in, seizure of property, demolition causing partial eviction, and a continuing "State Created Danger" of Homeless and Youth Gang Nuisance and Trespass, involving denial of discovery and disclosure of "Operational Practices" and underlying policy, presentation of witness...tortious behavior ...or a malicious intent to inhibit the exercise of constitutional rights?

6. Did my Federal Courts err, confuse and censor in applying Rooker-Feldman, when New York State court orders cannot have Res Judicata, collateral estoppel or 28 USCA sec. 1738 effect, on the Due Process, Equal Protection, or Takings claims, if they haven't provided a "Final Order on the Merits" of the use or ownership of the 60 square foot area of my apartment under litigation, nor provided the Due

Process necessary to make a final determination on the merits on the main issue of the case, as to whether the 60 square foot area of the alleged partial eviction is part of the apartment or not. Apx. p.132

7. Was my case prejudiced by the denial of discovery and disclosure when Individual Officer Liability is alleged, and there are unknown material facts as to ex parte communications between the City and State agencies, the landlord, the landlord's architect, or other ex parte communications still unknown? Was the preparation of my case prejudiced by the denial of discovery when the unwritten operational practices of shifting Title 42 USCA Section 1983 liability away from a City Housing Agency to an immune State Housing Agency are still unknown and the underlying unwritten operational policies and practices between the joint action of the City and State Housing agencies are still unknown to me?

8. Is it a Taboo, or form of Censorship or Does New York discriminate against tenants, as the real parties in interest, in denying a Timely and Adequate State Remedy in a full and fair opportunity to participate, object and litigate in the correction of a building code violation against his individual apartment? Is the denial of timely and adequate judicial review by state courts an entirely new and distinct constitutional violation in itself, separate from the original warrantless break-in, seizure and demolition?

9. Does New York Courts censor, discriminate and fail to provide an adequate state remedy, by not

allowing, non-landowning tenants to pursue 5th Amendment Regulatory Takings Claims or Temporary Takings claims?

10. Is it a New York unwritten policy of Censorship which doesn't allow tenants to timely object or litigate the warrantless entry and destruction of their homes or the return of their seized property?

11. Does the Dibbs line of state and federally reported cases create a false and unconstitutional precedent for the whole country?

LIST OF PARTIES

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VARIOUS unspecified
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Exception to preclusion and Full Faith and Credit Clause is when the state fails to provide the minimun requirements of due process. see, B. Young v GSL Enterprises, Inc., 170 A.D.2d 401(1991) stating, [DHCR] "...declining to hold a hearing and terminating the bureau's involvement ...not disposed of after a full and fair opportunity..." (citing Gramatan Home Investors Corp v Lopez), see also, **Rush Realty v Weston, 1 Misc.3d 130A, supra; Chinatown Apartments, Inc. v Chun fong Lee, 168 Misc. 2d 990 (1995);** Kremer v Chem Cnstr, supra; Hill v Coca Cola, supra; Davidson v Capuano, supra;
Moore's Federal Practice - Civil "§ 131.22. Claim Preclusion Does Not Apply to Actions Based On Different Claims.
Moore's Federal Practice - Civil ""132.03(g) Ambiguity Results in No Issue Preclusion" see ambiguous final state judicial review order, in Dibbs v Appendix U, pg pg 132.
<u>Ten Be Or Not Ten Be, Inc v Dibbs</u>, New York Law

Journal, 6/12/85, unanimously AFFIRMED, 117 A.D.2d 1028. (Stephen Dibbs, living in an illegal conversion, is protected by the residential and Rent Stabilization laws).

Bland v N.Y. 263 F. Supp. 2d 526. "Gratuitous Findings"; "Identity of Issue"; "not necessarily decided"; "full and Fair opportunity";

Camara v Municiapal Court of San Francisco, 387 U.S. 523 (1967) Warrant for Admin Searches.

Camperlengo v State Liq. Auth., 16 A.D.2d 342, 344. A reconsideration of a prior order starts the limitation period over.

Chinatown Apartments v Chun Fong Lee, 168 Misc. 2d 990 1995.

Davidson v Capuano, 792 F.2d 275(2d Cir 1986)(Article 78 without power to award damages)

Escalera v NYC Housing Auth., 425 F2d 853. (tenant is to be provided a hearing in the first instance - in the administrative proceedings and a Article 78 is inadequate to correct that deficiency)

Hill v. Cocoa Cola Bottling Co., 786 F.2d 550 (administrative proceedings that do not comport with the minimum requirement of Due Process cannot have Full Faith and Credit).

Kraebel v DHCR, 2000 U.S. Dist. Lexis 750 (Article 78 didn't provide a full and fair opportunity to litigate when a question of fact existed as to whether DHCR"s delay was egregious, without rational justification and violative of due process.

Kraebel v HPD, 959 F.2d 395 (Reasonableness of Administrative Delay is a question of fact in adequacy of administrative Due Process).

Kremer v Chemical Construction Co., (1982) 456 U.S. 461.agency fact finding can not be sufficient if

they haven't provided the minimum requirements of due process.

L.A.M. Recovery v Consumer Affairs, 184 Fed Appx 85 (2d Cir 2006, citing cases) Only collateral estoppel applies after 2 unsuccessful Article 78s. see, Manzo

Mathews v Eldridge, 424 U.S. 319.

Pernell v Southhall Realty, 416 U.S. 363(1974) 7th Amendment Jury Trial in ejectment

Rush Realty v Weston, 1 Misc.3d 130A; 781 N.Y.S.2d; 2003 N.Y. Misc. Lexis 1899

San Remo Hotel v San Francisco, Taking claims are not ripe until state judgment subject only to preclusion.

Shevin v Fuentes

Storey v Cello, 347 F.3d 370(2d Cir 2003)

Soldal v Cook County, 506 U.S. 56 (1992) Landlord's removal of tenant's trailor is unreasonable seizure.

Vargas v City of New York, 377 F.3d 200 (2d Cir 2004) "an unsuccessful Article 78 plaintiff, only issue preclusion triggers Rooker-Feldman..." but see, Exxon Mobil, v Saudi Basic, _____ U.S. _____ .

Young v GSL Enterprises, Inc., 170 A.D.2d 401 (1991) "[DHCR] enforcement bureau declining to hold a hearing and terminating the bureau's involvement ...were not disposed of after a full and fair opportunity to contest the decision." citing, Gramatan Home investors Corp v Lopez. **and "Instatnt action and the prior proceedings are based upon different causes of action and seek different relief." [time bar of my prior harassment proceedings cannot be conflated with ongoing reduction in services proceedings**

JURISDICTION

28 USC § 1254.

Judgment Entered, December 21, 2007, United States Court Of Appeals for the Second Circuit. Hon. Ralph Winter, John M. Walker, Guido Calabresi. see, Appendix A.

Reargument/Reconsideration, DENIED, United States Court of Appeal for the Second Circuit, January 17, 2008. This court has jurisdiction to hear this case as it was filed within 90 days of Reargument/Rehearing Denied. see Apx. C, pg. 35.

The United States Supreme Court has jurisdiction of this case under the Taking Clause of the Fifth Amendment to the United States Constitution, from a final order, dated February 8, 2000, of the New York State Division Of Housing And Community Renewal ("DHCR"), awarding a $12 per month rent reduction for the "Loss Of Private Space" of an apartment. see, Apx, M, at pg 98.

The United States Supreme Court can review the United States District Court's jurisdiction "...to evaluate whether the DHCR complaint-review procedure comports with the federal constitutional requirements." Dibbs v Tornicasa, 1999 US Dist Lexis 3284, at 14 (citing cases and authorities). And it is not for subsequent New York Federal and State courts to conflate time-barred harassment proceedings to entirely separate ongoing proceedings for a "Reduction is Services" complaint. (nor was it permissible for Judge Sand to interfere with the

ongoing DHCR administrative proceedings (Pullman-Younger-Burford Abstention). Nor use his decision to preclude future state judicial review of those ongoing matters.

The United States Supreme Court has jurisdiction of this case under the principles set forth in Davidson v Capuano; L.A.M. Recovery v Consumer Affairs, Vargus v _____ , that prior state administrative review has only collateral estoppel effect, and the State final judicial review order was ambiguous and still didn't come to a "final order on the merits" as to the Use and Extent of the property,, but moreover, impermissibly tried to substitute it's judgment for that of the Administrative agency, who was awarding a $12 rent reduction for the "Loss Of Space" (as a result of a 4th Amendment break-in and seizure of Tenant's land and personal belongings. see, also, Soldan v Cook County).

A final New York Civil Practice Law And Rules, "Article 78" State Judicial review of DHCR administrative action, did not rule that the case was time-barred, and went on to evaluate and rule on the merits. A subsequent appellate court decision that affirmed the decision and did not "reverse" or "modify" the decision only presents unnecessary dicta on matters in variance with the original decision, that are unnecessary.

Federal Courts have subject matter jurisdiction over matters that the New York Article 78 courts, having only limited jurisdiction and did not convert the case to a Declaratory Judgment, nor Plenary Action for Section 1983 Parity, in which proceedings, regarding warrantless search and

seizure, the petitioner was neither afforded the opportunity to subpoena witness, present witnesses, cross-examine witness, conduct discovery for the unreasonable 7 year administrative delay, nor offer additional evidence into the Article 78 proceedings where the administrative record was incomplete, not quasi-judicial, and because the DHCR closed the case to cover-up their own wrongdoing of inhibiting the exercise of constitutional rights regarding warrantless searches and seizures

Petitioner recites the above Jurisdiction statement, as if fully set forth herein:

Because New York denied a pre-deprivation opportunity for tenant to object to the warrantless search and seizure of his apartment, and was denied a timely, "adequate state remedy" in post-deprivation proceedings, where he's never received an evidentiary hearing at the administrative level,and this defect was uncorrected by an opportunity to present witness, evidence or conduct discovery in the Judicial review process, that it represents a total failure of justice, and the denial of a full and fair opportunity to litigate for 28 USC § 1738, Full Faith And Credit. Rush Realty v Weston; Hill v Cocoa; Young v GSL Enterprises; Chinatown Apts v Lee; Cola Bottling: Kremer v Chem Constr: .

This court has jurisdiction to determine if the State "DHCR" Housing Agency procedures, in joint action with the City "HPD" Housing Inspectors and City department of Buildings, comport with the minimum requirements of Due Process regarding a Continuing, State Created Danger and a Continuing Nuisance, interfering with property rights,

CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS OF THE CASE

(chronological order)

Ten Be Or Not Ten Be, Inc, v Dibbs, NYLJ 6/12/85, p11 col 1 (illegal conversion protected by Rent Stabilization)

Dibbs v Mulholland, 232 A.D.2d 346 (1996) Petitioner can Not sue **City** or State defendants because premature.

Dibbs v Tornicasa, 98 Civ 2102, United States District Court for the Southern District of New York, (Judge Leonard B. Sand) (fined March 23, 1999), 1999 U.S. Dist. Lexis 3284

Dibbs v Tornicasa, 98 Civ 2102, 1999 U.S. Dist. Lexis 19195 (filed, December 14, 1999)

New York State Division Of Housing And Community Renewal , **FINAL ORDER**, dated FEBRUARY 8, 2000

Dibbs v Mulholland, 292 A.D.2d 164(2002, leave to appeal, denied, 98 N.Y.2d 757.

Dibbs v Mulholland, 6 A.D.3d 232 (AD 1st Dept, decided, April 13, 2004), Affirmed, 4 N.Y.3d 846 (March 29, 2005).

Dibbs v Roldan, 356 F. Supp. 2d 340, Affirmed, 2d Circuit, November 28, 2007 , motion to Reargue, denied, , January 17, 2008,

OPINIONS BELOW

On December 16, 1994 , Plaintiff filed a proceedings in New York Supreme Court, raising Constitutional Claims against New York City Department Of Housing Preservation And Development (City HPD Housing inspectors), New York State Division Of Housing And Community Renewal (DHCR), his landlord (Ten Be Or Not Ten Be, Inc.), his landlord, (Timothy Greenfield-Sanders) and the landlord's architect, Lawrence Pinner. Appendix H, pg 44.. February 14, 1995 (unreported) Decision of New York State Justice Joan Lobis, denying litigation against HPD, DHCR, Landlord and landlord's architect, whereby the court delayed and Conditioned all claims against all parties on the DHCR giving a final order. Aff'd, 232 AD2d 346 (1996), Apx. I, pg 53. appeal to New York Court of Appeals, Denied October 21, 1997 . Apdx J pg 54.

On March 23, 1998, I filed docket number, 98 cv 2102 in Federal District Court June 2, 1999. DHCR order, subject to administrative review, reducing tenant's rent by $27 a month for "loss of private space" and storage space. Landlord and plaintiff filed timely Petitions For Administrative Review with the DHCR - Landlord saying that DHCR was granting a double reduction, because the **storage space and living space was one and the same** and my PAR stated that I wanted the partial eviction restored and a $27 rent reduction was inadequate. DHCR refused to decide my Petition For Administrative Review within the 90 prescribed by law, and so as not lose my right to go forward with my case, I was forced to pay for, the filing and service of a second Article 78, docket 124062/99, on

November 30, 1999, within the 60 days after the 90 day "Petition for Administrative Review, Deemed Denied" provided under DHCR rules, § 25 NYCRR 2529.11.

February 8, 1999, DHCR decided the petitions for administrative review, issuing their Final Order, reducing $27 rent reduction to $12 because the **"storage space and the private living space are one and the same".** Apendix M, pg. 93.

I made a motion to the Article 78 Court to supplement the proceeding with the new $12, DHCR order.

The court gave me permission to refile a new court proceeding against the $12 DHCR rent reduction, which I timely commenced on August 31, 2000, as New York Supreme Court docket number, 118708/2000, and I also appealed the dismissal.

On March 23 , 1999. Order of Federal District Court (98 cv 2102, SDNY), Judge L.B.Sand, stating that **Dibbs is bound in a loop where the State Courts refuse to adjudicate his claims without a final order from the DHCR and DHCR delays.** Apx K, pg 66.

November 30, 1999. I file summary proceeding against all parties in New York Supreme Court, 124062/99 (Hon Huff).

December 14, 1999. Final Order of Federal District Court (SDNY), Judge L.B. Sand, stating that Dibbs does not have a state created right to a hearing in discretionary, DHCR Harassment Hearings [but DHCR "maintenance of services" proceedings are still ongoing after 7 years].Apx L.

February 8, 2000. Final Order of New York State Division Of Housing And Community Renewal,

granting a rent reduction of $12 per month for the loss of private space. Apx M.
Dibbs refiles proceedings in New York State Supreme Court, index number 106 , and refiles in Federal District Court (SDNY)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 USCA Section 1983, to enforce my 1st Amendment Rights to petition the government for a redress of grievances and to prevent Censorship of these kinds of cases, and to enforce Camara v Muni Court of San Francisco, Soldal v Cook County, requiring New York to provide an "Adequate State Remedy" for a United States Constitution, 4th Amendment, Search and Seizure violation, and an "Adequate State Remedy" for the State refusing to provide the 14th Amendment, "minimum requirements of Due Process" (Kremer v Chem Constr Co; Hill v Coca Cola; Manzo v _____ ; Rush Realty v Weston; Chinatown Apts. V Lee; Additionally, to the 1st and 14th Amendment claims, the U.S. District Court was required to award me damages and injunctive relief pursuant to the "Takings" clause of the 5th Amendment of the U.S. Constitution, as the DHCR agency did not come to a final position until it's final order of, February 8, 2000, as an "Impermissible Regulatory Taking" and as a "Temporary Regulatory Taking" when the partial eviction should have been promptly restored and rebuilt to conform to code, and market value

awarded, not an inadequate, $12 rent reduction.

1st Amendment to the United States Constitution. Censorship of Claims and the right to petition to government.
4th Amendment to the United States Constitution. Expectation of Privacy and freedom from Warrantless search and seizure.
5th Amendment to the United States Constitution: Impermissible Takings; Regulatory Takings; Temporary Takings.
7th Amendment to the United States Constitution, right to jury trial with discovery.
14th Amendment to the United States Constitution, Notice, Equal Protection and Due Process

New York State Laws, **creating Due Process, protectable property rights** for Tenants:
State Multiple Dwelling Law:
§ _____ , Central Heat.
§ 50-a Entrances. "Every entrance for the street ... self locking doors..."
§ 78 Repairs. "...kept in good repair ...any persons ...willfully ...jointly..."

New York State Real Property Law, § 235-b Warranty Of Habitability.
New York State Real Property Law §853. Unlawful Entry and Detainer.

N.Y.State Emergency Tenant Protection Act of 1978.
§ 13 Cooperation with other government agencies. "The state division of housing and

community renewal shall receive cooperation and assistance [including HPD and Dept Buildings]

DHCR RULES

9 NYCRR § 2520.6(r) Required Services. [DHCR must maintain] **"That space and those services..."**

9 NYCRR§ 2523,4 Failure to Maintain Services.

Right to Trial, Denied

1st, 4th, 5th, 7th, 14th Amendments to the United States Constitution.

N.Y. State Civil Practice Law And Rules§§:

§4101. Issues Triable by a Jury. "...money, ejectment, waste, nuisance, recover a chattel.

§7804(h) Trial. "If a triable issue of fact..."

§ 745 Trial. N.Y.S. Real Property Actions And Proceedings Law. [of which no quasi-judicial administrative proceedings, nor state court judicial review process came close to Parity for preclusion]

New York City Administrative Code, sections:

STATEMENT OF THE CASE

A $12 rent reduction by a state housing agency is supposed to be only a temporary award until the premises are restored to conform to code after the city housing agency demolished a portion of the tenant's apartment causing a partial eviction and continuing nuisance.

When I moved in, in 1978, Avenue B was a ghetto with all the Stores boarded up.

The original landlord rented the stores for residential use.

When the building was sold, in 1984, the new owner commenced eviction proceeding against me for living in a commercial space.

Represented by legal aid, the housing court refused to evict me, and the landlord appealed.

The appellate court issued a five page decision creating a property right for me, holding that I could remain and was protected by the State and City residential rent laws. see, New York Law Journal, 6/12/85, unanimously affirmed, 117 AD2d 1028. (This unanimous, uncontested decision attached important Due Process property rights in continued full possession and habitability).

Not to be deterred, the landlord continued on a path of concealed tortious interference with the heat, water, electricity and repairs.

I wrote to the City commissioner of housing "HPD", complaining that his inspectors were refusing to respond to my heat and housing complaints.

In March, 1993, I came home to find that my apartment was broken into, and partially

demolished. (a security gate that acted as the boundary wall of the premises was seized).Homeless people were living in the front area of my apartment. The windows and doors had been boarded up with plywood. I was illegally locked out. My tables, chairs and other household belongings were seized as well as my business supplies.

I went back to the housing court to file a lawsuit. The housing court clerk said that the court doesn't do Harassment, and that I would have to go to file it with the State housing agency, the "DHCR".

I filed two separate complaints - one for Harassment, and one for "Lack Of Services".

The DHCR held a conference where the landlord stated that he broke into the apartment and demolished it, and seized my household and business belongings because he was acting under a violation from the City HPD inspectors, that a security gate was obstructing egress. (I never was sent or received Notice or a copy of the city HPD violation to have been able to commence a court proceedings against it until I was already "trapped" by "primary jurisdiction" in these DHCR administrative proceedings).

But the DHCR administrator ordered the illegal gate to be replaced with a legal gate, and to restore the legally required heat, and to repair holes in the ceiling and walls inside my apartment, caused by the water pipes freezing and bursting from the lack of statutorily required heat.

The DHCR also sent their own inspector to the apartment who issued a grade *3, Hazardous Violation* for the removal of the prior security gate, and to replace it with a legal gate within 30 days. see

Apx. F, pg 41.

After ex parte communications between the DHCR administrator, the DHCR Policy makers, the landlord, his architect and the City "HPD" Housing agency, I was informed that the DHCR had changed their course of action, and that the gate and the partial eviction was not going to be restored, nor the resulting continuing trespass and nuisance of homeless people and youth gangs utilize a portion of my apartment and public urinators from the 12 local bars, pissing inside my apartment.

The DHCR also said that they were going to [illegally] remove me from the building's central heating system and install a stand-alone gas fired heater inside my apartment (not only illegal as to Multiple Dwelling Law § ------, but, moreover, dangerously unvented from it's carbon monoxide exhaust as it would be installed inside of the partially enclose area of the partial eviction and DHCR was going to do this without the required building alteration permits, gas piping permits, electrical wiring permits and heat system permits).

When I objected that the repairs were insufficient and illegal, the DHCR administrator threatened me with closing my case if I didn't comply and telling me that "life isn't fair". I also called the city HPD Chief Deputy Inspector, who issued the original violation that removed the prior gate. He told me that he didn't care that the housing court and appellate court determined that I couldn't be evicted and I was rent stabilized, telling me "You Can't be there."

The DHCR administrator with the signed approval to the DHCR policy makers, closed my case

to conceal their illegal alteration errors, as well as to conceal the joint unconstitutional HPD / DHCR policy to obstruct the vindication of the 4th Amendment, warrantless search and seizure rights, by falsely stating that I was denying access when in fact, I was just objecting to their ordering of illegal and dangerous alterations. (Not only is this a question of fact on individual officer liability for trial, but, see, DHCR inspection report of all other *interior* apartment violations were corrected, showing that access was falsely being stated as denied.)

The HPD Chief Inspector Torincasa in statutorily mandated joint action, Commissioner Roldan, knew that they were violating the above, clearly established statutory and constitutional rights. Additional joint action and fraud was injected by the landlord's architect who knew or should have known, as the DHCR and HPD, the the illegal conversion didn't have a Certificate of Occupancy, nor was properly registered, and only tried to evade these requirements by intentional misrepresentations.

After receiving a DHCR letter stating that no enforcement action would be forthcoming, in December, 1994, I timely filed for judicial review, to mandamus the State DHCR to correct the partial eviction that the City Building Inspectors and City Violation had created with the assistance of the landlord. I raised constitutional claims, and included the City HPD Housing Agency. who issued the initial violation that was the cause of the partial eviction, and the case also included the landlord and his architect.

Because of all of the defendants joint misconduct, I was living (1) with my windows and

door boarded up (2) without heat (3) partially evicted (4) exposed to the "state created danger" and "state created continuing nuisance" of homeless people living in a portion of my apartment, with public urinators pissing in part of my apartment, effecting the entire apartment,and exposed to repeated assaults and criminal acts of people trying to break into my apartment because the prior gate was gone.

When DHCR closed my case, I timely filed an Article 78 state court judicial review proceeding, suing the dhcr, AND, hpd AND the landlord AND his architect, raising my constitutional claims ("to be construed as a 42 USC §1983") against all defendants.

The court dismissed my constitutional claims against all the defendants, *conditioning* the lawsuit on the DHCR issuing a final agency order.

This would prevent me from litigating my state and constitutional claims for the next six years.

The DHCR would refuse to issue a final order and the State would deny litigation without one. They would stall me past the statute of limitations.

By the time the Top state court affirmed the delay of my constitutional claims against all of the defendants, by, sua sponte dismissal[making declaratory relief unavailable under Fed Cts Improv Act 1997], dated, October 21, 1997, it was now past the 3 year statute of limitations for a Section 1983 against the break-in and seizure if I were to commence a new action in a federal forum.

Accordingly, under the Federal Courts Improvement Act of 1996, the state courts and judges are subject to declaratory relief from a federal court by denying me declaratory relief, as

"unavailable" and violating my past declaratory relief of the housing court awarding me residential status.

Accordingly, the State courts stalled and prevented any remedy against any of the defendants, but moreover, they put me into a position where the state courts refused and the DHCR would refuse a final order and that I would never be able to litigate my claims.

Accordingly, on March 23, 1998, I commenced a 42 USC § 1983 action, Index no. 98 Civ 2102, in Federal District Court for the Southern District of New York, assigned, Judge Leonard B. Sand.

On March 23, 1999, Judge Sand dismissed the City and the landlord as time-barred, but not the DHCR. Apx. K at p.66 "...petitioner appears bound in a loop whereby the DHCR will not issue a final order and New York Court express an unwillingness to offer review without on." [sufficient for tolling and Equitable relief when a declaratory decree is violated or unavailable] and Apx L, at p. 85.

On June 2, 1999, the DHCR, instead of restoring me to private possession of the front area of my apartment, granted a $27 dollar a month rent decrease: "$10 for the loss of Private Space; $10 dollars for the loss of Storage Space; $2 for the loss of the gate"' and $5 dollars for having to put up with piss, excrement, garbage and homeless living in my apartment.

I filed a Petition for Administrative Review ("PAR") saying that the money was inadequate but, moreover, I wanted to be restored back to private, undisturbed use of the area, in some legal way.

The Landlord also filed a PAR, stating the

Order granted too much, because the "Private Space and the Storage Space, was one and the same."

The DHCR once again stalled deciding our PARs in the hope that we would fail to bring a court challenge to decide them, which would once again prevent review of their mistakes.

On December 14, 1999, Judge Sand dismissed my Federal case in it's entirety, stating that although the case was not time-barred against the DHCR, I had no right to a hearing in discretionary DHCR harassment proceedings [not the ongoing "reduction is services complaint proceedings]

I filed my second State Article 78, 124062/99, to have the partial eviction and continuing nuisance corrected.

The DHCR issued their Final Agency Order, dated, February 8, 2000, during the pendency of the Article 78 proceedings, [and presumable to moot the proceedings, but discovery was not allowed for me to know the reasons or obtain evidence].

On April 7, 2000, I paid for and filed my second action in Federal District Court for the Southern District of New York, docket number 00 CIV. 2734, challenging the destruction and refusal to repair my apartment. Judge Sand dismissed this challenge also, dated April 14, 2000, stating, "...right to the order lies in the New York Supreme Court ...absence of federal jurisdiction *at this time*..." Apx P.

I also made a motion to amend my pending Article 78 to include the new DHCR order.

The Dates of Rendition and Filing with the clerk, indicate that the judge illegally Back-dated the order, to fraudulently dismiss my case as mooted. Apx N pg 100 [but in my current RICO claims

against this perjury and falsification of a public document, I wasn't granted discovery to ascertain this or to obtain evidence to prove my case].

Moreover, under the CPLR, it was the duty of the administrative agency to have amended the administrative record to include the new order. 7804(e). [discovery and disclosure into the state of mind and factual reasons and DHCR's unwritten operational practices surrounding this denial are still matters for the Federal Court to decide if the DHCR procedures comport with due process for an award of damages in a individual officer liability case, which is beyond the limited jurisdiction of Article 78].

The Article 78 judge, refusing to go forward with my case, did give me permission to file a new action against the new, February 8, 2000 DHCR order, commencing my third article 78, docket number 118708/2000, on August 31, 2000..

I also appealed the dismissal of the second Article 78, case 124062/99.

Again, on April 16, 2001, my third Article 78 petition was dismissed on the same grounds as the second - that I didn't include a copy of the DHCR order with my petition, (Apx Q, pg 110-111) even though I didn't get an appellate decision on this issue yet, and the state legislature, under Civ Prac Law and Rules, 7804(e), made it the duty of the administrative agency to submit a certified copy of the record to the court. And, as stated above, I went before oral argument before the judge, who was to have read the submissions by that time, and under CPLR 2214, could have informed either myself or the administrative agency that the papers were still

incomplete for her to come to a decision.

The court gave me leave to file a new petition against the DHCR order. Apx Q, at 111 - 112.

Dated December 7, 2001, the landlord sent me a letter, stating, "You will be pleased to know that we obtained the attached permit to convert your space to a legal apartment..." but entertaining alterations that were unnecessary, unwanted and illegal.

The one thing it did do was approve a gate where the DHCR and HPD policy makes denied me one in contravention of DHCR's own inspector's report. see, DHCR inspection report, Apx F. This was New Evidence, for both the Federal Court and the state court, that the DHCR and HPD was wrong, and that a gate was permissible.

I paid for, filed and served my forth Article 78, docket number 106421/2002, on March 26, 2002, challenging both the DHCR orders and that I should have been included in the Department of Buildings legalization process.

By Order, dated, November 19, 2002, the Article 78 was dismissed, holding that the DHCR orders were not arbitrary or capricious, that I didn't exhaust my administrative remedies before the Department of Buildings and that the case was dismissed against the landlord, without prejudice because no substantial litigation was conducted against him yet. Apx. U, pg 136. affirmed, 6 A.D.3d 232. Apx. W, p.188.

On February 7, 2003, I commenced the decision under review, in the United States District Court for the Southern District of New York, assigned, Judge Sprizzo.

Judge Sprizzo dismissed the case under the principles of the Rooker-Feldman doctrine, (Apx B) and was affirmed by the Second Circuit, by order, dated, October 6, 2005 (Apx. A), reargument and rehearing denied, dated, January 17, 2008 (Apx. C).

REASONS FOR GRANTING THE PETITION

The overriding reason for granting this petition is because New York does not provide "An Adequate Remedy" for tenants complaining about 4th Amendment violations, nor does New York provide an "Adequate Remedy" or a "Full or Fair opportunity to litigate" the correction of building code violations or for legalization of illegal conversions.

Although an adequate remedy may be available in theory, the history of my case shows that it wasn't available in practice.

Additionally, when I was preparing my case, I was astonished and alarmed that I couldn't find a New York case on point, where the tenant was complaining about the landlord illegally , unconstitutionally and without a warrant, entering his apartment under the "Color of Law" of a building code violation.

This case is important because what New York did to me, they must have done to many other tenants, as it is not uncommon to hear tenants complaining of finding the landlord or his workmen, unexpectedly in their apartment.

Forty Years after Camara v Municipal Court of San Francisco, instead of complying with it's mandate, and creating laws and policies to protect the 4th Amendment's right for people to be secure in their home, New York, instead instituted a policy where they steer such complaints into procedural failure, so the court won't even have to make a reportable ruling "on the merits" of the

unconstitutional policy.

In the absence of an emergency or special circumstances, City HPD housing inspectors can't break into my home and seize my property, and they certainly can't order the landlord to do something that they can't do themselves

Instead of protecting my Constitutional rights, New York State and Federal judges instituted deliberate and cleverly deceptive schemes to destroy my claims, one of which was by forcing them past the statute of limitations by unnecessary, redundant and overly burdensome litigation.

And even when I was diligent beyond reason, as my case history shows, and my case wasn't time-barred, the judges create a new and additional constitutional violation, by lying, and saying the case is time barred when it is not, just so they can extinguish the case on other grounds without having to discuss or rule on the 4th Amendment, warrantless break-in, seizure of household belongings and demolition of a part of my apartment.

This is State Sponsored Censorship.

As a nationally reported case, my case affects millions of citizens across the nation who could be offended by the landlord's warrantless breaking or entering into their homes "Under The Color of Government Orders" without the proper safeguards.

Just as Mr. Camara and Mr Soldal lost all the way through their court proceedings - until U.S.

Supreme Court review - New York's unwritten custom and practice is to cleverly and deceptively refuse to comply. We need declaratory relief because we can't rely on being able to reach the US Supreme Court every time our homes are invaded and our property is seized or ruined and the state refuses a prompt and adequate remedy.

That this case involved a dangerous nuisance, New York should have provided judicial review in 1994, at my first Article 78 proceedings,and the Court/DHCR Delay itself rose to the level of a constitutional violation and by stalling past the limitations period.

New York's administrative land use practices are a cesspool of unconstitutional abuses, in large part, because the Federal Courts, including the U.S. Supreme Court propagates the false notion that these matters are better left to local courts, and so it opened the doors to extremes and abuses such as mine, where they broke into my home, seized my personal and business belongings, demolished a portion of my home and boarded up the windows and doors for seven years and they refused to provide a remedy.

In the era of expanded "States Rights" it is time for this court to make a distinction between a court coming to an erroneous determination from court decisions with proof of a deliberate intent to inhibit the exercise of constitutional rights.

The prior judges in my case, omitted or falsified the facts and law to apply, so radically in my case, that the legal community, looking for similar precedent, will get a total misconception about what the law should be.

The legal and political community, as well as the public, and especially this court, should be shocked and alarmed at how my home was broken into and destroyed without a warrant, and the exposure to prolonged health and safety violations, and the state refused to provide a remedy.

CONCLUSION

My case is important, because in the light of Camara and Soldan, it shows how deeply evasive and deceptive new york policy has become to extinguish and conceal 4th Amendment abuses against renters. From the stalling tactics and misuse of summary, Article 78 proceedings, I can't imagine how any cases could have reached the supreme court. The absence in New York and national caselaw on my issues, is evidence of what they did to me, they did to countless people before me and will continue to do to countless more citizens, unless the America's top court acts. If not now, when?

My case can go forward because these federal courts have jurisdiction to determine if the DHCR procedures comported with the minimal requirements of Due Process appropriate to a 4th Amendment, warrantless entry, seizure and demolition of property with a concomitant continuing Nuisance and Trespass

My case can go forward, because neither the administrative proceedings conducted an evidentiary hearing, nor was the "Esclarara deficiency" corrected by a trial with the submission of additional evidence to correct an insufficient administrative record, nor was there an adversarial opportunity to present

witnesses or cross examine or conduct discovery, to attach preclusive effect for 28 USC 1738 purposes, and no less the confusion that Sprizzo and the 2d Circuit propagate by citing Rooker-Feldman.

My case can go forward on Permanent and Temporary, Regulatory Taking grounds, as an unconverted Article 78 summary proceeding is historically and procedurally an insufficient forum for such claims, particularly when the court's final order didn't even determine if the 60 square foot area of the partial eviction at issue, was a part of the apartment or not. There can be no preclusion under these circumstances.

The DHCR and HPD holds themselves out to protect tenants from landlord abuses, but instead they amplified them. I went to these agencies to restore my apartment to protect it's habitability, and they took all my rights away. DHCR manipulated the courts by failing to file complete administrative records and the they manipulated the courts by withholding orders until they could moot the proceedings. They knew I was living with my windows and doors boarded up and the required heat turned off. They knew that I was subjected to repeated break-ins and assaults and the homeless and youth gangs were living and utilizing a portion of my apartment. They used it as political motivation so I would get hurt and have to move out. Roldan and Tornincasa are subject to individual officer liability for which a Article 78 is insufficient for.

In 1993, I went to housing court to file a

harassment claim against my landlord, and the clerk directed me to go to the DHCR with my extremely serious complaints about the landlord breaking, entering and destroying my apartment.

For political or policy reasons which are still unclear, because of the denial of discovery, the DHCR took all my rights away. Unlike the housing court, I have never heard of even one person say that they had a quasi judicial hearing at the DHCR involving tortious conduct which would be mandatory under that grant of state power. As the Kraebel court determined, it's a factual issued to be determined at trial, [after discovery] why an agency unreasonably delays. DHCR and HPD took down a security gate that is named exactly for it's function. DHCR and HPD and the Landlord and his architect all knew that I was living under the sever and dangerous circumstances described above, and knowingly blocked it's correction. These people took the health and safety laws that are supposed to protect citizens and used them for purposes of harassment and oppression.

It's a jury question whether their so-called repairs were really adequate or just a pretense to further damaging my apartment and keeping me in danger as coercive policy. (LaTrieste Restaurant)

Anyone who has lived with the heat turned off for a few days, knows how devastating it is. I got disoriented and I couldn't bath. I lost my job. I had to seek refuge in the public library and other public places. These people created an. I knew that homeless people were living in a portion of my apartment. These people knew that I was living with foul odors

filling my apartment from garbage in the basement and carbon monoxide from the malfunctioning heating system, and I couldn't open a window for ventilation.

They tortured me and dehumanized me.

The DHCR holds itself out to administer Harassment, and maintenance of services. I have state created property rights in the central heating of my apartment, it's habitability, and to be free from Nuisance, trespass and state created danger. These state created property interests were taken away without comporting with due process. Moreover, my Constitutionally protected, Expectation Of Privacy, and to be free from a Warrantless Entry, Partial Eviction and Search and Seizure of my home and belongings, where the state denied me a prompt pre-deprivation hearing and also denied me a prompt, "Adequate State Remedy", under an unwritten local practice of evading or ignoring 4th, and 14th Amendment violations by inspectors, and, or, of dismissing lawsuits because the agency hasn't issued a final order, or the order isn't attached to the court petition, when the Legislature requires that the agency submit a full record to the court (CPLR § 7804(e)). The courts aren't allowed to substitute their local unconstitutional policy over the legislature and the constitutionally legitimate statute. Under the springes of local practice, the court below denied me the minimal requirements of Due Process, of a timely hearing (jury trial required by CPLR § 7804(h); under New York Common Law in Nuisance and trespass; under CPLR § 4101 for money, ejectment and Nuisance); United States Constitution, Amendment, 1st (right to petition the

government); 4th Amendment freedom from unreasonable searches and seizures; 7 Amendment, jury trial; 14th Amendment, Due Process clause; 42 USCA § 1983.

New York's unwritten policy creates a new, separate and additional Constitutional violation by the Censorship of these kinds of cases by falsifying the true nature of the case to prevent it's litigation, and, or, delaying the case past the statue of Limitations, and putting false blame on the innocent victim. Federal Judge Sprizzo furthers this Censorship by prohibiting my further litigation, especially when the courts still haven't litigated or issued a "Final Order On The Merits" on the main issue, as to whether or not the area in question is part of my apartment or not, and it's habitability or whether the partial eviction perpetrates a Continuing State Created dangerous nuisance or the DHCR $12 rent reduction is an impermissible regulatory taking of a portion of the leasehold. Along with my case, the total absence of New York caselaw on such a common occurrence as my case, is evidence of a systemic policy of discrimination and censorship of tenants lawsuits objecting to code violations, or to warrantless entry, or to the regulatory taking of a portion of their leasehold to third parties, especially after 40 years since this court decided Camara v Muni Ct and Soldal v Cook County. This absence of caselaw is evidence that what New York has done to me, is exactly what they've done to hundreds or thousands of other citizens with similar complaints - they railroaded our cases.

These people broke into and destroyed my apartment under a minor building code violation.

My case is important because it demonstrates the unethical and even criminal lengths that New York Federal and State judges will go to prevent a ruling or even a court reported discussion on these claims, and it's because of these tactics, that a case like mine may never servive these tactics to come before you again.

It's not the legitimate role of state rights to purposely thwart the vindication of constitutional rights.

Liberals, conservatives, constructionists, Democrats and Republicans alike, must all be concerned about the warrantless break-in of their homes, and seizure of their property and particularly to an unwritten State policy of censorship and extinguishment of such claims. New York's remedies were neither timely nor adequate. The fundamental right to privacy or the extingishment of the right to litigate it's breach is of utmost importance to all Americans.

This is cleaverly tailored and deceptively concealed abuse happening 40 years after Camara.

If you don't allow review now, the lower courts will prevent it from coming again.

Signed, Stephen Dibbs

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